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THE STATE OF NEW HAMPSHIRE

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THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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April 20, 1983

Mr. Neil D. MacPherson
Right-of-Way Engineer
Department of Public Works & Highways
John O. Morton Building
Concord, New Hampshire 03301

Re: Relocation Assistance

Dear Mr. MacPherson:

By memo of March 24, 1983, you asked whether persons are entitled to the benefits of State relocation assistance, RSA 230:33-43, if the Highway Department determines it is necessary to acquire their property in accordance with RSA 228:34, I(c). It is our opinion that relocation assistance must be provided.

The State Highway Department is acquiring the subject property apparently because "privately-owned water supplies have been destroyed or rendered unfit for use as water supplies because of construction or maintenance operations on the State highway systems." RSA 228:34. You have said that while other methods of correction have been attempted, it is now the Department's belief that the entire residence should be acquired by the Department because water supplies cannot be adequately replaced. Relocation assistance must be provided "to persons displaced from their property as a result of highway activities undertaken by the Department of Public Works and Highways." RSA 230:33. Since the persons here clearly will be displaced as a result of State Highway Department activities, relocation assistance must be provided.

Your memo also asked whether a clause could be placed in the deed of conveyance whereby the private owners would waive their rights to a future water supply replacement on other land they own in the Windham area. I do not believe such a clause would be appropriate.



First, if such an agreement is made between the Highway Department and these owners concerning other separate properties, it should be in a separate written agreement, not included in a deed concerning this property. Second, and more important, it does not appear that RSA 228:34 can be avoided by the State in this manner. That is, it appears that the Highway Department must respond to any private water supply complaints if the water is rendered unfit because of construction or maintenance operations on State highways. The law does not seem to contemplate limiting such responsibility to only one property per owner. Therefore, if the persons involved in the present case move to another property they own and that property also has its water supply affected by State Highway Department operations, I believe the owners would again be entitled to the protection of RSA 228:34. They should not be forced to give up future benefit of that right as a condition for receiving assistance now.

I trust this answers your questions. If you would like to discuss this matter, please call.

Very truly yours,

Martin R. Jenkins
Assistant Attorney General
Eminent Domain Division

MRJ/krh

cc: Reuel Webb
John Flanders
Ralph Mahar
Richard Latham

83-58-I